PA 13-183—sHB 6527
Children Committee
Public Health Committee
Judiciary Committee

AN ACT CONCERNING GENETICALLY ENGINEERED FOOD

SUMMARY: This act generally requires certain foods intended for human consumption that are entirely or partially genetically engineered to be labeled as such. The requirement also applies to seed or seed stock intended to produce such food. The act generally deems such items misbranded if they do not contain the required label. These requirements go into effect in the October following the enactment of similar laws in four other states meeting certain criteria. One of these states must border Connecticut, and the total population of such states in the northeast must exceed 20 million.

The labeling requirement does not apply to certain food products, such as (1) alcohol, (2) food not packaged for retail sale that is intended for immediate consumption, and (3) certain farm products. Also, in two situations where the labeling requirement applies, failure to comply does not render the food items misbranded.

The act generally subjects knowing violators to a daily fine of up to $1,000 per product. But retailers are liable for failure to label only under certain conditions.

By deeming food that violates the act's labeling requirements to be misbranded, the act also allows the Department of Consumer Protection (DCP) to place an embargo on and, in some circumstances, seize the food. A person who misbrands food or sells misbranded food in Connecticut may be subject to criminal penalties (see BACKGROUND).

The act requires the DCP commissioner to enforce the act's labeling requirements, within available appropriations. It authorizes him to adopt regulations to implement and enforce these requirements.

Among other things, the act also:

1. explicitly includes infant formula in the definition of "food" for purposes of the act's labeling requirements as well as other provisions in the existing state Food, Drug and Cosmetic Act and
2. specifically excludes genetically engineered foods from the definition of "natural food," for purposes of the laws regulating the advertisement, distribution, or sale of food as natural. (This applies to food for humans as well as animals.)

The act also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

MISBRANDED GENETICALLY ENGINEERED FOOD, SEED, AND SEED STOCK

Genetic Engineering

Under the act, "genetic engineering" is a process by which a food or food ingredient is produced from an organism or organisms in which the genetic material has been changed by:

1. in vitro nucleic acid techniques (see below), including recombinant DNA techniques and direct injections of nucleic acid into cells or organelles (parts of cells), or
2. fusing cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

The act defines "in vitro nucleic acid techniques" as techniques, including recombinant DNA techniques, that use vector systems and techniques involving the direct introduction into organisms of hereditary material (e.g., genes) prepared outside the organisms, such as microinjection, macroinjection, chemoporation, electroporation, microencapsulation, and liposome fusion.

When Labeling Requirement Takes Effect

The labeling requirement (see below) goes into effect on the October 1 following the DCP commissioner's recognition of the following:

1. four other states, including one state bordering Connecticut, have enacted a mandatory labeling law for genetically engineered foods that is consistent with the act's labeling requirement and
2. the total population of these states located in the northeast region of the country exceeds 20 million, based on 2010 census figures (see BACKGROUND). Under the act, the northeast region includes the other New England states, New Jersey, New York, and Pennsylvania.

Within 30 days after his recognition that these conditions have been met, the commissioner must publish the date the act's labeling requirements will take effect in the five newspapers in the state with the largest circulation.

Labeling Requirement

The act generally requires food intended for human consumption, and seed or seed stock intended to produce such food, that is entirely or partially genetically engineered, to be labeled with the clear and conspicuous words "Produced with Genetic Engineering." Such food, seed, or seed stock is deemed misbranded if it does not contain the required label, subject to the exceptions set forth below.

The label must be displayed in the same size and font as the ingredients in the food label's nutritional facts panel. (It is unclear how this provision applies to products that do not have such panels.) The specifics of the labeling location vary depending on the type of item, as shown in Table 1.

Table 1: Location of "Produced with Genetic Engineering" Label

Item Type	*Required Location of Label*
Food sold wholesale and not intended for retail sale	The bill of sale accompanying the food during shipping
Packaged food for retail sale	Not specified (presumably on the package)
Raw agricultural commodity (i.e., a food in its raw or natural state, including fruit that is washed, colored, or otherwise treated in its unpeeled, natural form before marketing)	(1) The package offered for retail sale or (2) for such commodities that are not separately packaged or labeled, on the bill of sale or invoice for the items and on the retail store shelf or bin that displays them for sale
Seed or seed stock	(1) The container holding the items displayed for sale or (2) any label identifying the item's ownership or possession

Responsibility for Labeling. Under the act, anyone selling, offering for sale, or distributing in Connecticut food, seed, or seed stock subject to the labeling requirement must ensure that the item is labeled. But despite this provision, a retailer can be penalized or held liable for failing to label such items only if (1) the retailer produces or manufactures the item and sells it under a brand the retailer owns or (2) the failure to label was knowing and willful.

Also, in any action against a retailer for failure to label, it is a defense that the retailer reasonably relied on (1) a disclosure concerning genetically engineered foods contained in the bill of sale or invoice provided by the wholesaler or distributor or (2) the lack of any such disclosure.

The act defines a "retailer" as a person or entity that engages in the sale of food intended for human consumption to a consumer. A "manufacturer" is a person who produces such food, or seed or seed stock intended to produce such food, and sells such items to a retailer or distributor. A "distributor" is a person or entity that sells, supplies, furnishes, or transports food intended for human consumption in Connecticut that the person or entity did not produce.

Exemptions from Labeling Requirement. The act exempts from the labeling requirement:

1. alcoholic beverages;
2. food not packaged for retail sale that is (a) a processed food prepared and intended for immediate consumption or (b) served, sold, or otherwise provided in a restaurant or other food facility primarily engaged in the sale

of food prepared and intended for immediate consumption;
3. farm products sold by a farmer or his or her agent to a consumer at a pick-your-own farm, roadside stand, on-farm market, or farmers' market;
4. food consisting entirely of, or derived entirely from, an animal that was not genetically engineered, regardless of whether the animal was fed or injected with any genetically engineered food or any drug produced through genetic engineering; and
5. processed foods that would be subject to such labeling solely because one or more processing aids or enzymes were produced or derived from genetic engineering.

Under the act, a "processed food" is any food intended for human consumption other than a raw agricultural commodity. The term includes food produced from a raw agricultural commodity that has been processed through canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

A "processing aid" is a substance added during processing to a food intended for human consumption that:

1. is removed before packaging,
2. is converted into constituents normally present in the food without significantly increasing the amount of the constituents naturally found in the food, or
3. was added for its technical or functional effect in processing but is present in the finished food at insignificant levels without any technical or functional effect in the finished food.

Exemptions from Being Deemed Misbranded. While subject to the act's labeling requirement, the following are exempt from being deemed misbranded if they are not labeled:

1. food for human consumption that was produced without the producer's knowledge that a seed or other food component was genetically engineered (the act does not specify how a producer would show this) or
2. on or before July 1, 2019, a processed food subject to the act's labeling requirement solely because it contains one or more genetically engineered materials that in the aggregate do not account for more than 0.9% of the processed food's total weight.

However, it appears that knowing violations of the labeling requirement in regard to such items are still subject to the civil penalty described below.

Civil Penalty

Under the act, anyone found to knowingly violate the labeling provisions is subject to a civil penalty of up to $1,000 per day. The penalty applies to each uniquely named, designated, or marketed product, but not to individual packages of the same product.

INFANT FORMULA

Under existing law, the Food, Drug and Cosmetic Act defines "food" as (1)

articles used for food or drink for people or other animals, (2) chewing gum, and (3) articles used for components of any such article. The act specifically includes infant formula in the definition. Presumably, infant formula already fits within the law's definition of food.

Thus, the act specifies that genetically engineered infant formula is subject to the act's labeling requirement unless an exception applies, as set forth above. Also, all infant formula is subject to the other provisions applicable to food in the Food, Drug and Cosmetic Act. Among other things, that act bans the sale in intrastate commerce of adulterated or misbranded food.

The act defines "infant formula" as a milk- or soy-based powder, concentrated liquid, or ready-to-feed substitute for human breast milk that is commercially available and intended for infants.

NATURAL FOOD

Under existing law, "natural food" means food for humans or animals that has not been (1) treated with preservatives, antibiotics, synthetic additives, or artificial flavoring or coloring and (2) processed in a way that makes it significantly less nutritious.

Under the act, food also cannot be described as "natural" if it is genetically engineered. By law, foods advertised, distributed, or sold as "natural" without meeting the definition of that term are deemed misbranded.

DISTRIBUTOR AND MANUFACTURER

Under the act, the definitions of distributor and manufacturer (see above) apply to an existing provision providing that packaged food is deemed misbranded if it does not have a label indicating the name and place of business of the manufacturer, packer, or distributor. As this provision applies to food intended for animals as well as humans, its legal effect is unclear.

BACKGROUND

Population of Northeast States

According to the 2010 Census, the population of the other New England states, New Jersey, New York, and Pennsylvania is as follows:

Table 2: Population of Other Northeast States, 2010 Census

State	*Population*
Maine	1,328,361
Massachusetts	6,547,629
New Hampshire	1,316,470
New Jersey	8,791,894
New York	19,378,102
Pennsylvania	12,702,379
Rhode Island	1,052,567
Vermont	625,741

Misbranding Criminal Penalties

The law prohibits misbranding food or selling misbranded food in Connecticut (CGS § 21a-93). A first violation is punishable by up to six months in prison, a fine of up to $500, or both. Subsequent violations, or violations done with the intent to defraud or mislead, are punishable by up to one year in prison, a fine of up to $1,000, or both (CGS § 21a-95).

Generally, a person is not subject to criminal penalties for selling misbranded food in Connecticut if he or she obtains a document signed by the person from whom he or she received the food in good faith, stating that the food is not misbranded in violation of this law. This exemption does not apply to violations committed with the intent to defraud or mislead (CGS § 21a-95).

DCP Embargo and Seizure of Misbranded Food

The law authorizes the DCP commissioner to embargo food that he determines or has probable cause to believe is misbranded. Once the commissioner embargoes an item, he has 21 days to either begin summary proceedings in Superior Court to confiscate it or to remove the embargo.

Once the commissioner files a complaint, the law requires the court to issue a warrant to seize the described item and summon the person named in the warrant and anyone else found to possess the specific item. The court must hold a hearing, and must order the food confiscated if it appears that it was offered for sale in violation of the law.

If the seized food is not injurious to health and, if repackaged or relabeled, could be brought into compliance with the law, the court may order it delivered to its owner upon payment of court costs and provision of a bond to DCP assuring that the product will be brought into compliance (CGS § 21a-96).

OLR Tracking: JO:JKL:VR:RO